

Open Minutes

Missouri State Board of Optometry

**February 14, 2002
Hyatt Regency Crown Center Hotel
2345 McGee Street
Kansas City, Missouri**

The open meeting of the Missouri State Board of Optometry was called to order by Dr. Max T. Aldrich, President, at approximately 9:00 a.m. on Thursday, February 14, 2002, at the Hyatt Regency Crown Center Hotel, 2345 McGee Street, in Kansas City, Missouri.

BOARD MEMBERS PRESENT:

Dr. Max T. Aldrich, President
Dr. Karen B. Rosen, Vice President
Dr. Cathy L. Frier, Secretary
Dr. Harold L. Poynter, III, Member
Ms. Vickie E. Young, Public Member

STAFF MEMBERS PRESENT:

Sharlene Rimiller, Executive Director
Sue Wilson, Executive I

LEGAL COUNSEL PRESENT:

Ms. Elena Vega, Assistant Attorney General
Mr. Edward 'Chip' Walsh, Private Legal Counsel

GUESTS:

Mr. John Rollins, Wal-Mart Vision Centers
Ms. Kim Mason, Bryan-Cave Law Firm
Ms. Jane Rackers, Assistant Attorney General
Mr. Dale Youngs, Assistant Attorney General
Dr. Larry Snider, Past Board Member

To better track the order in which items were taken up on the agenda, each item in the minutes will be listed in the order it was discussed in the meeting.

APPROVAL OF THE AGENDA

A motion was made by Dr. Poynter and seconded by Dr. Rosen to approve the agenda with one addition, the regional CLEAR conference that will be co-hosted by the Missouri Division of Professional Registration on June 27-28, 2002, in St. Louis. Motion carried unanimously.

APPROVAL OF MINUTES

A motion was made by Dr. Poynter and seconded by Ms. Young that the minutes of the October 13, 2001 meeting and the November 13, 2001 conference call meeting be approved as written. Motion carried unanimously.

EXECUTIVE DIRECTOR REPORT

Financial Statement

Mrs. Rimiller presented the Board with the following financial statement for FY-02 as of January 1, 2002.

Beginning Fund Balance				\$202,727.76
Revenue (7/1/01 to 12/31/01)				<u>\$121,682.35</u>
Fund Balance Sub Total				\$324,410.11
Appropriations to Board:				
Personal Service	\$41,725.60			
Expense & Equipment	<u>\$42,604.00</u>			
Total Appropriations	\$84,329.60		\$84,329.60	
Appropriation Expenditures:				
Personal Service	\$14,282.20			
Expense & Equipment	<u>\$20,346.74</u>			
Total Appropriation Expenditures	\$34,628.94	\$34,628.94	<u>\$34,628.94</u>	
Fund Transfers: (Projected for Year)				
Rent & Utilities	\$2,279.82			
General Revenue	\$7,750.00			
Optical Imaging	\$1,171.20			
Hancock	\$0.00			
DED/MIS	\$4,797.17			
Refunds	\$700.00			
Professional Registration	\$28,291.72			
FY-01 Transfers Paid in FY-02	<u>\$6,713.47</u>			
Total Transfers	\$51,703.38	<u>\$51,703.38</u>		
Total Fund Expenditures		\$86,332.32	-	\$86,332.32
Estimated Revenue (1/1/02 – 6/30/02)			+	\$10,447.65

Fund Balance Sub Total			=	\$248,525.44
Unexpended Appropriations:				
Personal Service	\$27,443.40			
Expense & Equipment	<u>\$22,257.26</u>			
Total Unexpended Appropriations	\$49,700.66		\$49,700.66	\$49,700.66
Fund Balance Projected as of 6/30/02				\$198,824.78

Mrs. Rimiller said that she was a little surprised that the Board's expense and equipment expenditures for the first six months of the fiscal year was close to ½ of the Board's total appropriation. It is not typical for the Board to spend its entire expense and equipment budget but upon further examination, Mrs. Rimiller said that she realized the expenditures are higher earlier in this fiscal year because the cut off date for FY-01 expenses was in June last year instead of July. Additionally, she said there has been added litigation expenses in FY-02 but those expenses should level out.

O.A. Transfer of Funds to General Revenue

Mrs. Rimiller provided the Board with a status report on O.A.'s proposal to sweep licensing board funds to help balance the state budget. The sweep would affect the Optometry Board Fund in the amount of \$14,922, which Mrs. Rimiller explained is in O.A.'s supplemental budget request for FY-02. She explained that this is approximately 7.36% of the Board's unobligated funds as of June 30, 2001. There is also an ongoing budget request from O.A. for FY-03, but it is only 9/10 of 1% of the total FY-01 expenditures, including transfer costs. At this time, the Office of Administration is not included in the Division's cost allocation. Mr. Walsh informed the Board that he has done a fair amount of research regarding this topic for the Accountancy Board and he provided a brief overview of that research. It was the consensus of the Board not to take any action in this matter due to the fact that their portion of the total amount is almost insignificant when compared to the sweep amount of some of the other boards and/or commissions.

Rulemaking Status Report

Mrs. Rimiller reported that the proposed changes to the Board's Fee rule and Annual License Renewal rule were filed on December 14, 2001. The proposed amendments appeared in the Missouri Register on January 15, 2002 with a thirty-day public comment period. Mrs. Rimiller explained that it is very important that the rules progress through the system with little or no interruption so that they have a chance to become effective before renewal applications are mailed in August,. A motion was made by Dr. Rosen and seconded by Dr. Frier that unless there are comments to consider after the thirty-day public comment period, the Board file the final Orders of Rulemaking on both proposed amendments. Motion carried unanimously.

Continuing Education Audit Update

Mrs. Rimiller provided a list of licensees that were selected at random for an audit of their continuing education hours for the reporting period of September 1, 2000 through August 31, 2001. The Board is currently auditing 30% of all renewed licenses and Mrs. Rimiller asked if the Board wants to continue auditing 30% in the future. It was noted that this is only the second year of the affidavit reporting system and it was the consensus of the Board that in light of the problems found in the first audit, no changes be implemented at this time.

Renewal Update

The Board reviewed the list of licensees that did not renew for the licensing period of November 1, 2001 through October 31, 2002. This list will appear in the Board's newsletter and Mrs. Rimiller asked if the Board wanted to take any further action to investigate those that are showing a Missouri address. It was the consensus of the Board that publication of the list in the newsletter is an adequate measure and no further action was taken. Mrs. Rimiller provided the Board with a copy of the final draft newsletter that is ready to go to print.

Continuing Education Course Approval

The Board reviewed the list of continuing education courses that were approved between the date of the last meeting and the date of this meeting. A motion was made by Dr. Rosen and seconded by Dr. Frier that the Board ratify approval of the continuing education courses from the list provided. Motion carried unanimously.

BOARD TRAVEL

The Board reviewed the tentative agenda for the 83rd annual meeting of the Association of Regulatory Boards of Optometry (ARBO). It was noted that this year's meeting is on June 23-25, 2002, in New Orleans, Louisiana. A motion was made by Dr. Poynter and seconded by Ms. Young that the Board send Dr. Aldrich, Mrs. Rimiller and the new board member, if appointed, to the ARBO annual meeting in New Orleans if individual scheduling and time permits. Motion carried unanimously.

Mrs. Rimiller reported that the Missouri Division of Professional Registration is hosting the CLEAR regional conference this year on June 27-28 in St. Louis. Board member and staff participation is encouraged. A motion was made by Dr. Poynter and seconded by Dr. Frier that the Board authorize those board members and staff who want to attend the CLEAR regional conference in June to receive reimbursement for time and travel expenses. Motion carried unanimously.

LEGISLATIVE REPORT

The Board reviewed Mrs. Rimiller's February 8th legislative report. The Board focused its attention primarily on four bills, House Bill 1689, House Bill 1906, Senate Bill 1031 and Senate Bill 1097. Mrs. Rimiller noted that there is some concern regarding Senate Bill 1031, relating to the ability for the Division's licensing boards to continue using private legal counsel for litigation of licensing cases before the Administrative Hearing Commission. She also mentioned that the Law Committee might want to take a look at Representative Treadway's House Bill 1689 because it contains changes specific to the

Optometry chapter relating to reciprocity and inactive licenses. Mrs. Rimiller indicated that House Bill 1906 is the authority for the O.A. fund sweep and with Senate Bill 1097, a request has been renewed from last session to authorize testimony in opposition to the bill. That request was just made and a response has not yet been received.

COMPREHENSIVE PATIENT CARE FOR DIABETES

The Board reviewed the correspondence received from Dr. Michael R. Duenas asking whether or not optometrists in Missouri are authorized to prescribe a blood glucose monitor and supplies for home patient use. Secondly, Dr. Duenas is asking whether or not optometrists in Missouri are authorized to check a blood glucose level in the office. Ms. Vega provided the Board with a draft response letter. Ms. Vega said she found nothing in section 336.010 to 336.220 that specifically authorizes an optometrist to order a blood glucose monitor and supplies for home patient use or to check a patient's blood glucose levels. Dr. Rosen said that she has ordered the test from a lab and has had no problem receiving the results. In light of Dr. Rosen's comments, Ms. Vega and Dr. Poynter were asked to get together and revise the draft response and get it to Mrs. Rimiller for mailing.

FUTURE MEETING SCHEDULE

The Board scheduled its next meeting on July 13th at Lake Ozarks. Mrs. Rimiller was asked to make the meeting arrangements at the Country Club Hotel, if possible.

The October 2002 meeting was set in conjunction with the MOA convention. This meeting will also be held at the Country Club Hotel at Lake Ozarks. Mrs. Rimiller was asked to find out the date of the MOA convention and schedule the Board meeting on that Saturday.

CRIMINAL HISTORY CHECKS

Mrs. Rimiller asked the Board to consider discontinuing the fingerprinting requirement of all new applicants for licensure. According to the Board's staff, fingerprinting delays the licensure process by approximately 6 to 8 weeks and experience has shown that, generally, optometrists do not have criminal histories that would warrant denial of their application for licensure. Because there have been problems with lost fingerprints and backlogs in processing fingerprint cards with the Highway Patrol and the FBI, sometimes the application is delayed by several months. The question before the Board at this time is whether the information obtained by the criminal history checks warrants the types of delays that have been experienced in the licensure process. Ms. Vega pointed out that the criminal history checks are a way to ensure good moral character. A motion was made by Dr. Poynter and seconded by Dr. Rosen that the Board begin the process to amend its rules to eliminate fingerprinting as a requirement for licensure. Motion carried unanimously.

CO-MANAGEMENT

The Board reviewed the draft response to the Missouri Society of Eye Physicians and Surgeons (MoSeps) letter from Mr. Richard Paul dated December 19, 2001, regarding the Board's response to its previous inquiry on the issue of co-management of surgical

eye care. A motion was made by Dr. Poynter and seconded by Dr. Frier that the Board approve the draft response to the December 19th MoSeps letter as written. Motion carried unanimously.

OPEN RECORDS REQUESTS

Mrs. Rimiller informed the Board that as a result of a recent open records request, she thought it would be beneficial for the Board to talk about their Internet e-mail correspondence. A copy of the Secretary of State's draft guidelines on managing e-mail was provided to the Board. Mrs. Rimiller noted that according to this document, e-mail could be an official public record. She asked that the Board recognize and understand that their e-mail communications, particularly to the Board office, may be an official record and unless the message is attorney-client privilege, the e-mail message is probably a public record.

STORAGE AND UTILIZATION OF CORRECTIVE EYEWEAR PRESCRIPTIONS

The Board reviewed the correspondence received from Mr. Robert Dietz dated December 21, 2001, asking for guidance relating to any potential regulatory or statutory impacts on a proposed web-based application for the storage and utilization of corrective eyewear prescriptions. It was the consensus of the Board that the Missouri Optometry statutes and/or regulations do not address the storage of corrective eyewear and Mr. Dietz should be notified to consult with private counsel in this matter.

MAIL ORDER CONTACT LENSES

The Board reviewed the correspondence received from Dr. Jonathan L. Warner regarding a serious problem with mail order and Internet contact lenses. Dr. Rosen applauded Dr. Warner's efforts but stated that until there are enforceable laws regulating mail order contact lenses, there is not much the Board can do to assist Dr. Warner. The Board reviewed the Utah law regulating mail order contact lenses. Ms. Vega found the Nebraska approach interesting because the changes were not made to the optometry statutes but to the personal property statutes so their law applies to more than optometry. Mrs. Rimiller informed the Board that Sara Rittman from the Attorney General's Office had drafted a similar statute many years ago, intending for it to apply to optometrists, pharmacists, physicians, etc. The Board asked that this item be included back on the July agenda for further discussion and that Mrs. Rimiller locate a copy of Ms. Rittman's draft statute for further review. Mrs. Rimiller was also instructed to respond to Dr. Warner by informing him that the Board is very aware of the situation and agree with his concerns but unfortunately, the Board's attempts to bring some regulation into Missouri have been unsuccessful. Dr. Warner is also to be told that the Board is continuing to look into the matter.

LAW COMMITTEE

Dr. Larry Snider, Chairman of the Board's Law Committee, informed the Board that Ms. Vega e-mailed him some draft language that amends the definition section of the optometry statutes. From his initial review, Dr. Snider said that it looks pretty good but

the Committee has not had an opportunity to meet and discuss the proposal. After the Committee gets past approving the changes needed to the optometry definition section, Dr. Snider thought the other changes would progress fairly rapidly. Mrs. Rimiller asked Dr. Snider to take a look at Representative Treadway's legislation relating to reciprocity and inactive licenses to make certain there is nothing there his Committee would oppose.

BOARD PRESENTATION

On behalf of the Board, Dr. Aldrich presented Dr. Larry Snider with a plaque for his many years of service and leadership as a member of the Missouri State Board of Optometry.

APPEARANCE BY JANE RACKERS

Assistant Attorney General Jane Rackers appeared before the Board at approximately 11:30 a.m. to talk specifically about issues regarding the Internet. Ms. Rackers is the Chief Counsel to the Governmental Affairs Division of the Attorney General's Office. The Attorney General's Office is in a unique position to see some of the Internet trends in other agencies that may be of some assistance to the Board. Some of the things they are seeing come up are issues relating to the Professional Registration professions. An example is prescribing over the Internet without a physician/patient relationship. They are also seeing issues regarding the offer of certain types of therapies over the Internet, such as psychological and mental health issues. Many times this is problematic because there is not a client/patient relationship and the Attorney General's Office will be taking action to stop some of these practices. Another item is the issue of confidentiality when communicating over the Internet. Ms. Rackers said that attorney and clients must maintain confidentiality as well as various health care professionals and their patients. There are things that must be done in order to ensure confidentiality. Another issue is record keeping. As a professional, Ms. Rackers questioned how adequate records of communications are maintained regarding patients or clients. With regard to the e-mail, Ms. Rackers encouraged the Board members to examine how they communicate. Her advice is to recognize that e-mail communications are public records and to draft communications accordingly. Deleted e-mails can be retrieved and these communications are subject to the Sunshine law. Another issue involves advertising on the Internet. Ms. Rackers said that those professions that regulate a professional's advertising, the regulations apply to advertising done on the Internet. They are seeing other huge issues in advertising and promotional materials as well. Licensing boards are also dealing with electronic signatures. The question is when are electronic signatures acceptable. For example, the Architects and Engineers require plans to be signed and sealed. If these professionals want to create drawings and send them electronically, Ms. Rackers questioned under what circumstances would that be permissible when there is an electronic signature. Ms. Rackers also mentioned the fact that there is a bill pending in the legislature dealing with the electronic signature issue. Lastly, Ms. Rackers indicated there are evidentiary issues springing up in terms of gathering evidence of things that are on the computer. These cases are generally being seen when an employee is alleged to have embezzled state funds. The documents that will prove or dis-prove

these cases are on the computer. The obstacle in this situation seems to be how to get this information off of the computer while the computer is continuing to operate. Electronic filing is another issue being looked at by the Division. The Boards want to have the capability to renew their licenses over the Internet. The Court system is requiring that some documents be filed electronically. We may be seeing this in the future with the Administrative Hearing Commission and the Boards, such as the probation violation cases. The Attorney General's Office has been involved in the no-call list and to the extent possible, the notices are being sent by e-mail because of the cost savings. In closing, Ms. Rackers introduced Mr. Dale Youngs who is providing information with regard to services available to the Board specifically related to their Hi-Tech and Computer Crime Unit.

APPEARANCE BY DALE YOUNGS

Assistant Attorney General Dale Youngs appeared before the Board at approximately 11:55 a.m. to talk specifically about the services available through the Hi-Tech and Computer Crime Unit of the Attorney General's Office. Mr. Youngs explained how the unit got started. Mr. Youngs described for the Board an incident that occurred in Townsend, Massachusetts. Children at a middle school had been threatened by e-mail messages and through their investigative techniques, it was found that the e-mail messages were coming from a computer in Smithville, Missouri. The Hi Tech Unit of the Attorney General's Office was created in July of 2000. There is a dedicated unit in Jefferson City and it deals with all the issues that Ms. Rackers discussed, i.e., high technology and computer crimes. It serves as a resource not only to law enforcement, but other agencies as well. There is a forensic lab at their facility in Jefferson City. They have an Internet Investigations area where they conduct undercover purchases from on-line prescribing and dispensing web sites. They surf the Internet looking for Pedophiles. They have three investigators, two field investigators and one in-house investigator. In the first year of business, their unit handled 36 cases of one kind or another and that number has increased to 156 in calendar year 2001. Last year they assisted in the execution of 22 search warrants around the state in which some kind of computer media was seized by local law enforcement and of that, their unit conducted 55 forensic examinations. Their primary job is to act as a resource to law enforcement dealing with identity theft, credit card theft, e-mail spam, Nigeria letters, child exploitation, child pornography, etc. More relevant to the professional boards is the professional service their unit provides. On-line prescribing and dispensing is a big issue with the Board of Pharmacy, the Board of Registration for the Healing Arts and also the Veterinary Medical Board. They deal with web sites, operators, on-line pharmacies and on-line doctors who are willing to prescribe and dispense any number of medications. In closing, Mr. Youngs wanted the Board to be aware of their services and agreed that on-line contact lens dispensing will be an issue that will come up in the future. Dr. Poynter asked if it was illegal for someone to hack into someone else's computer without that person's knowledge. Mr. Youngs indicated that it could be. Where this is seen most often is employee/employer situations. Dr. Poynter explained that he installed a firewall into his computer and within six minutes of installation, he had a hacking attempt. He was able to identify a computer protocol address and according to Mr. Youngs, it is possible to find out where Dr. Poynter's hacking attempt came from,

at least to the Internet provider. Mr. Youngs will answer any questions with regard to these issues. He left his business card with the Board for that purpose. The meeting with Ms. Rackers and Mr. Youngs concluded at approximately 12:20 p.m.

CLOSED SESSION

Motion was made by Dr. Rosen and seconded by Ms. Young to move into closed session pursuant to section 610.021 (1) and (14) RSMo, for the purpose of discussing complaints, investigative reports, applicants for licensure, general legal actions, causes of action or litigation and any confidential or privileged communications between the Board and its attorney. Motion carried unanimously.

OPHTHALMIC TECHNOLOGIST

Dr. Aldrich appointed Dr. Poynter to chair a committee with Dr. Frier on the ophthalmic technologist issue and make a report at the next meeting. Dr. Poynter will assist Mrs. Rimiller in writing a letter to Dr. Bruce Bubacz asking for clarification on his use of the term refractometry.

ADJOURNMENT

There being no further business to be brought before the Board at this time, the meeting adjourned at approximately 5:40 p.m.

Respectfully submitted,

Sharlene Rimiller, Executive Director

Approved by the Board on: _____